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### A Message from the President Kristin VanSoest

The question is often asked whether safety is a valuable investment for a company or whether dealing with the consequences for not providing safety is the more cost effective method. One of the biggest influences in safety insurance companies, and they are giving bigger and better breaks to companies that have an effective safety program in place. Insurance premiums are one of a company's largest expenses, along with accidents or injuries paid out of pocket, and this is proof of how related your bottom line is to your safety program. Much of the cost of an accident is "hidden", or indirect, as opposed to direct costs on the surface. These costs can include anything from lost production time by not only the involved worker, but also any coworkers that have to cease work due to the accident or injury, to lost product or equipment damage, time spent retraining replacement employees, and a rise in overall insurance premiums. Keeping your company active with safety is your best approach to reducing these hidden, or indirect, costs. Next time you're looking for a way to put money back into your company, look at putting it into safety. Safety should always be viewed as an investment, not an expense.

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### News and Events

#### Trade Show Participation

This past quarter Safety Resources was pleased to be a part of the ISA "The Construction Networking Event of the Year" trade show on February 24, 2011. We also participated at the ASSE/Indiana Chamber of Commerce trade show on March 1, 2011. Both conferences were a great turnout and we enjoyed catching up with other local industry professionals.

## The Competent Person

By: Chris Hall

OSHA uses many phrases within the regulations to ensure that employers are meeting the requirements necessary to provide a safe working environment. One such definition that some employers have a difficult time meeting is the "Competent Person." The phrase here is capitalized to emphasize the importance of the definition. OSHA defines Competent Person as "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them."

When asking the Average Joe what a competent person is, you are likely to get a response such as "someone that is competent." The reality is that OSHA is looking for much more. Competent Person is a designation made by the employer to signify that the individual meets the requirements of the specific definition. They must have knowledge of the safety work practices (and regulations) as they apply to his particular area of competency. They must be capable of conducting onsite inspections or reviews of the work procedures and environment to determine if any hazards exist, or would be likely to exist through the course of work. Finally, the individual must have the authority to stop work, make changes, or order some type of corrective action. This authority is extremely broad, as it has to be the final word in operations of the work. A foreman, superintendent, or even project manager would not have the ability to overrule the Competent Person's decision. If the Competent Person has to make a phone call to verify it is acceptable to make specific changes, they don't have the required authority.

The employer is required to appoint a Competent Person for many different aspects of work that goes on at their site. A Competent Person is required to; conduct regular job-site inspections to identify hazards, inspect rigging equipment, oversee scaffold erection, inspect scaffolding, inspect fall protection, inspect cranes and working conditions, inspect trenches and excavations, oversee excavation activity, etc... There are not many aspects of construction activity which do not require a Competent Person to be onsite and in charge of that particular activity.

Due to the nature of the designation, the competent person is a representative of the employer. Decisions, right or wrong, are determined in almost all cases to be that of the employer rather than an individual. This is why it is crucial that companies ensure their Competent Persons are qualified for the designation, and that all employees understand their role. It is not as simple as sending an employee to safety training, and calling them competent. Employers must go the next step and require that each Competent Person is able to demonstrate their ability and knowledge through testing on jobsite performance evaluations. If it is determined that their knowledge and ability is lacking, the employer must re-evaluate the individual's status as a Competent Person.

Many employers train their entire staff, call them all competent, and set company policy to state that anyone can stop work due to a safety concern. This course of action is not to be discredited, as it gives many employees the ownership needed to take safety into their own hands. But, employers must be cautious, because when multiple employees are working together, only one can have the title "Competent Person." Even though everyone may be capable, only one can have the authority required to make the final decisions.

**"Due to the nature of the designation, the competent person is a representative of the employer."**

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## OSHA Inspection Procedure

By: Jeff Groce

Last quarter we detailed the different types of inspections that OSHA can perform. This quarter we will discuss the steps that a compliance officer takes upon coming onto your site and the Opening Conference.

A Compliance officer will come to the office trailer and introduce himself, show his credentials and then make the reason for his visit known. The compliance officer will tell you if it is a complaint, general schedule inspection, emphasis program inspection or if he is there for a fatality or catastrophe investigation.

As the compliance officer is going through the introduction and reason for being on site, he may or may not inform you of your constitutional rights, in that you have the right to request that he obtain a search warrant before being allowed to come on site. The compliance officer may not give advanced notice of the inspection before coming on site. He is not allowed to call a company and inform them that he will be showing up in site on such a date and at such a time. He is to just arrive on site, unannounced and find the superintendent.

Once he has introduced themselves and you have allowed them to be on site, they must hold an opening conference. The opening conference will be held with a representative from each contractor on site. The opening conference may be held as a group and everyone attends. The compliance officer will tell everyone who they are and the reason for being on site.

The compliance officer will ask if each representative is an authorized representative of their respective companies. The authorized representative is just someone that can speak for the company at the opening, answer a few simple questions and is allowed to fill out a form that will contain the company information. The compliance officer will also request to see a copy of the company's Written Hazard Communication program and a copy of their MSDS manual. The questions that will be asked are how big is the company, total number of people and their union's local number, if they are a union signatory.

The compliance officer will then look over the written safety documentation that has been provided to them and then will look for the required postings, such as the OSHA poster and the OSHA 300 log if it is the time of year that it is required to be posted. After the program review and the posting, the compliance officer is ready to start the physical tour of the site and work areas. The inspection process will be covered in next quarter's newsletter.

“This quarter we will discuss the steps that a compliance officer takes upon coming onto your site and the Opening Conference.”

## Emergency! Emergency!

By: Ryan Clayton

What would you do? That question should make you think. Your answer could mean the difference between life and death for a co-worker. Are you prepared for the unexpected? Do you know what to do? Do you know who to call for help? Are you qualified to help? If you answered "yes" to these questions – Excellent! However, if you answered "no" then you need to pay special attention to this article.

No matter what your position at the construction project, you need to know what to do in the event of an emergency. Your life and the lives of your co-workers could depend on your training and knowledge. If you are the first one on the scene, you need to protect yourself from any hazards. For example, precautions may need to be taken to deal with blood or other body fluids, gas leaks, and power lines. You don't want to become another victim. Stay cool, remain calm, and call for help: contact 911, local emergency officials or a jobsite emergency response team. You are the main link between the emergency and the outside world. Secure the area and keep co-workers and others out of the area unless they are trained to provide assistance.

If you are qualified to give emergency care, protect yourself first. Make sure you wear your Personal Protective gear. If the victim is conscious talk to him/her; reassuring the victim will prevent him/ or her from going into shock. Check your ABC'S:

### A - Airway

- Open the airway and check for any obstruction

### B - Breathing

- Check for the rise and fall of the chest while listening /feeling for breath

### C - Circulation

- Check for a pulse

If the victim is not breathing start CPR (Cardio-Pulmonary Resuscitation). Cardio pulmonary resuscitation, or CPR for short, is the best form of artificial resuscitation. In the old days we were taught to use the back pressure arm lift method when someone stopped breathing. We did not have a method to make the heart keep pumping blood. CPR has been around for over twenty years now, and yet we still find people who do not know how to use this life saving procedure. If the person is bleeding provide direct pressure of the wound to stop the bleeding.

Emergencies are unplanned events. They come unexpectedly and may involve you. What will you do if an emergency occurs? Find out whom to call and know where a telephone is. Learn the locations of fire extinguishers and first aid kits, and make sure you know how to use them. Learn and understand emergency procedures and evacuation routes for the job-site. Be prepared for the unexpected. Do it now. Don't wait until after the emergency to learn what to do. Ask your Safety Director if you have any questions.

You may need to help save a life tomorrow! Is your first aid training up to date?

“No matter what your position at the construction project, you need to know what to do in the event of an emergency.”

## The Informal Conference By: Matt McCreery

The Occupational Safety and Health Administration is conducting over 50,000 inspections per year of work places covered by the Occupational Safety and Health Act of 1970. Often times an employer will receive citations based on the conditions at their worksite or facility and immediately sign the informal settlement agreement and pay the penalties. Once an employer has acknowledged the violations in this manner they move from alleged violations, to actual violations which in turn can lead to several issues down the road depending on the contractor's size and type of work. An example of these long term effects could be loss of reputation, increased fines for repeat violations, loss of competitive advantage and a number of issues that can affect a company negatively. Contractors need to understand the process that the OSHA Act allows and they need to be ready to take advantage of them when the time comes.

The first thing contractors need to understand is the type of violations they can be cited for by OSHA. Each of the following categories have their own characteristics along with their own monetary penalty range.

### Types of Violations

**Willful:** A willful violation is defined as a violation in which the employer knew that a hazardous condition existed but made no reasonable effort to eliminate it and in which the hazardous condition violated a standard, regulation, or the *OSH Act*. Penalties range from \$5,000 to \$70,000 per willful violation.

**Serious:** A serious violation exists when the workplace hazard could cause injury or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation. OSHA may propose a penalty of up to \$7,000 for each violation.

**Other-Than-Serious:** An other-than-serious violation is defined as a situation in which the most serious injury or illness that would be likely to result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate relationship to their safety and health. OSHA may impose a penalty of up to \$7,000 for each violation.

**De Minimis:** De minimis violations are violations that have no direct or immediate relationship to safety or health and do not result in citations.

**Other:** A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as "other."

**Failure to Abate:** A failure to abate violation exists when the employer has not corrected a violation for which OSHA has issued a citation and the abatement date has passed or is covered under a settlement agreement. A failure to abate also exists when the employer has not complied with interim measures involved in a long-term abatement within the time given. OSHA may impose a penalty of up to \$7,000 per day for each violation.

**Repeated:** An employer may be cited for a repeated violation if that employer has been cited previously for a substantially similar condition and the citation has become a final order of the Occupational Safety and Health Review Commission. A citation is currently viewed as a repeated violation if it occurs within 5 years either from the date that the earlier citation becomes a final order or from the final abatement date, whichever is later. Repeated violations can bring a civil penalty of up to \$70,000 for each violation.

**"The first thing contractors need to understand is the type of violations they can be cited for by OSHA."**

## Teamwork “FORE” Construction

By: Aaron Wissen

A key element in developing and maintaining any safe and productive project is teamwork. Projects will run more punctually and efficiently when communication and teamwork between labor and management is a focal point. Accidents can be prevented through quality teamwork.

Think of safety on the golf course. Millions of people play golf every year, and yet even the most novice of golfer is aware of this warning...“FORE!” This simple form of communication is teamwork at its best, and provides an opportunity to prevent a possible injury.

What applies on the golf course also applies on the job. Following the rules and working safely is everyone’s responsibility, but you have to think about other people working around you. You never know when someone is going to need a little teamwork from you or the other way around.

Approach each situation as it occurs by working together and remember the following points for teamwork:

1. Any suggestions for making the project safer should be shared with co-workers and management, don’t keep it to yourself. Tool Box Talks are a great forum for these discussions.
2. If you see something wrong, don’t think someone else will fix it. If you can’t correct it easily yourself, report it and make sure it gets corrected.
3. Assist or find help for tasks that are too large for someone to handle alone.
4. Ask for help. Teamwork requires everyone’s participation.
5. Think about the other person, their safety may depend on you.

“Following the rules and working safely is everyone’s responsibility”

## The Competent Person Continued from page 2

The Competent Person in construction is an individual who knows the safety rules, is capable of identifying hazards, and has authority to correct them. Each specific standard may have particular guidelines for what that Competent Person's responsibilities include, but all follow the basic definition. At the end of the day, the Competent Person must know their role and take the responsibility seriously, and all employees must understand and follow their instructions.

## The Informal Conference Continued from page 5

A VIOLATION CAN BE CITED AS REPEATED IF THE EMPLOYER HAS BEEN CITED FOR THE SAME OR A SUBSTANTIALLY SIMILAR VIOLATION ANYWHERE IN THE NATION WITHIN THE PAST 5 YEARS.

Once an employer understands what the citations were for, they need to carefully evaluate if they agree with the proposed penalty/category associated with their alleged violations. Even if the determination is that the penalty is valid, a contractor is recommended to schedule an Informal Conference. Often enough, the proposed penalties assigned fall into a higher risk category than the employer thinks appropriate or the penalty itself has no merit. In these cases and Informal Conference can prove invaluable.

Before we go any further lets review the options for employers during the OSHA process:

### Employer Options

As an employer who has been cited, you may take either of the following courses of action:

- If you agree to the Citation and Notification of Penalty, you must correct the condition by the date set in the citation and pay the penalty, if one is proposed;
- If you do not agree, you have 15 working days from the date you receive the citation to contest in writing any or all of the following:
  - Citation
  - Proposed penalty, and/or
  - Abatement date

OSHA will inform the affected employee representatives of the informal conference or contest.

Before deciding on either of these options, you may request an informal conference with the OSHA Area Director to discuss any issues related to the citation and notification of penalty. (See **Informal Conference and Settlement.**)

### Informal Conference and Settlement

Before deciding whether to file a **Notice of Intent to Contest**, you may request an informal conference with the OSHA Area Director to discuss the citation and notification of penalty. You may use this opportunity to do any of the following: Obtain a better explanation of the violations cited;

- Obtain a more complete understanding of the specific standards that apply;
- Negotiate and enter into an informal settlement agreement;
- Discuss ways to correct violations;
- Discuss problems concerning the abatement dates;
- Discuss problems concerning employee safety practices;
- Resolve disputed citations and penalties, (thereby eliminating the need for the more formal procedures associated with litigation before the Review Commission); and
- Obtain answers to any other questions you may have.

## The Informal Conference

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An informal conference will allow a contractor with the opportunity to meet with OSHA's area director and, if requested, the inspector in an informal setting to discuss the elements of the citation. In this setting it is often an opportunity for the contractor to present its case for reduced severity, reduced penalties, and sometimes outright deletion of cited items. If nothing else, the employer has demonstrated their concern for safety, and willingness to make improvements in their safety culture and program. Which often times is half the battle.

Next quarter we will discuss employer affirmative defense options that contractors can pursue to have items deleted as well as the importance of arguing for reduced severity when it comes to serious or willful violations. If you have any questions regarding this article, or if you would like to speak with someone to help you with the OSHA citation process, please call us at 1-800-641-5990.

*Some information in this article was retrieved from the Occupational Safety and Health Administration OSHA. <http://www.osha.gov/Publications/osha3000.html> in penalties.*